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**THE EUROPEAN COMMUNITY:  
A PRIMER**

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## THE ISSUE

The European Community (EC) is one of those serious topics which provokes discussion in the financial press, but otherwise rarely compels the public consciousness. Ontarians with family in Europe or who follow international affairs may have heard 1992 is a momentous year for the Community, but they are more likely to be aware that 1992 is the year the summer Olympics will be held in Barcelona, Spain.

In fact, there are at least three reasons why Ontarians should be interested in the European Community. The grand objective of the Community is to bind together a continent of nations which have engaged in some of the bloodiest wars in modern history. The Community is a noble exercise not only in international cooperation and peacemaking, but also in the construction of representative institutions covering an entire continent. Thus, the Community merits attention as an ambitious experiment in the art of government. Second, as a model of how disparate peoples, nationalities and cultures can live together in peace and prosperity, the European Community should be of interest to all Ontarians concerned with Canada's national unity crisis. Finally, in the 1990s the Community is emerging as an economic superpower which can be expected to challenge the global influence of Canada and Ontario's closest neighbour, the United States.

The purpose of this Paper is to describe the historical origins of the European Community and analyze the operation of its principal institutions. A companion Current Issue Paper will provide a brief sketch of current developments in the Community and their likely impact on Ontario and Canada.

## INTRODUCTION

Today the European Community (EC) consists of 12 countries<sup>1</sup> with a population of 340 million, covering an area of 2.25 million square kilometres. The Community accounts for roughly 20% of world trade.

The Community is constituted by three founding treaties: the Treaty of Paris (1951), which created the European Coal and Steel Community (ECSC); the Treaty of Rome (1957), which created the European Atomic Energy Community (Euratom), and the second Treaty of Rome (1957), which created the European Economic Community, now known simply as the European Community.<sup>2</sup>

Collectively these treaties establish the "constitution" of the EC: they set up the various governmental organs of the Community and outline their powers. The treaties also contain provisions on social and economic matters not usually found in the constitutions of the world's liberal democracies, reflecting the "hybrid nature of the Treaties and, indeed, of the Community itself."<sup>3</sup> The EC is not a nation-state but a grouping of sovereign states which, for specified purposes, have ceded sovereignty to supranational institutions.

## THE CREATION OF THE EUROPEAN COMMUNITY

The concept of European unity has deep roots in the history of the continent. Through centuries of dynastic struggles, religious wars and nationalist conflict, the belief that despite their differences Europeans shared a common cultural inheritance was always kept alive by scholars and a handful of far-sighted monarchs. In the early decades of the twentieth century federalist movements sprang up all over Europe. However, it took the carnage of World War Two to convince the politicians that the time had finally come to translate the ideal of unity into practice. In a famous speech delivered at Zurich University in 1946, Winston Churchill suggested that the nations of Europe should strive "to recreate



the European family, or as much of it as we can, and provide it with a structure under which it can dwell in peace, in safety and in freedom. We must build a kind of United States of Europe."<sup>4</sup>

### **The European Coal and Steel Community**

The efforts of European politicians to lay the foundations of a new supranational community finally bore fruit in May 1950, when Robert Schumann, the French foreign minister, launched a plan (known as the Schumann Declaration) which he had worked out with Jean Monnet, a civil servant with a long-standing interest in European unity, to pool the coal and steel production of France and West Germany under a joint Authority whose membership would be open to any other European country.

The objective of the Schumann Declaration was to prevent the possibility of another European war by binding West Germany to Europe through a grouping of European states. Schumann and Monnet hoped that if the coal and steel resources of West Germany could be interlocked with that of the rest of Europe, war between Germany and the rest of the continent would become unthinkable.

Italy, Belgium, Luxembourg and the Netherlands agreed to join France and Germany to form the Community, and in April 1951 these six countries signed the Treaty of Paris creating the ECSC.

The Preamble to the ECSC Treaty captures Schumann and Monnet's hopes for a new Europe. The Treaty's purpose was

to substitute for age-old rivalries the merging of essential interests; to create by establishing an economic Community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; to lay the foundations for institutions



which will give direction to a destiny henceforward shared.

The ECSC was designed to ensure orderly supplies of coal and steel to all member states, leading to a rational expansion and modernization of production, thereby improving the conditions and lifestyles of those working in these industries.<sup>5</sup> In its early years the ECSC was judged to be an important success. During the first five years of its operation, the trade in coal and steel among the six member states increased by 129%. Since then, however, the Community has faltered. Proposals by the High Authority for Community solutions to member states' economic problems have been ignored, many barriers to trade within the ECSC remain, and, most important, the relative importance of coal and steel to the economies of Europe have declined.<sup>6</sup>

### **Early Moves Toward Integration**

In October 1950 the French government launched the idea of a European Defence Community (EDC). The EDC was inspired by political conditions in Europe: the Cold War was raging, and East-West relations were dangerously strained. The EDC was conceived as a means of integrating the armed forces of Europe in order to bolster the Atlantic Alliance. However, in August 1954 the French National Assembly refused to approve the draft EDC treaty on the grounds that it curbed French sovereignty.<sup>7</sup>

From the EDC's failure the six ECSC member states drew the lesson that any ambitious attempt at the political integration of Europe was bound to fail. In June 1955 the foreign ministers of the ECSC launched a more modest initiative which concentrated on economic integration as a first step towards political unity. Negotiations began the next year, and resulted in the Treaties establishing the European Atomic Community and the European Economic Community.

## **The European Atomic Community**

The objective of the European Atomic Community (popularly known as Euratom) is the safe development of nuclear energy for peaceful purposes. The first Treaty of Rome establishing Euratom covers matters such as the promotion of research, the dissemination of information, health and safety, and a nuclear common market. The Treaty was worded to accommodate the unwillingness of the member states to accept restrictions on their freedom of action. For example, Article 52 established an Agency with the "exclusive right to conclude contracts relating to the supply of ores, scarce materials and special fissile materials coming from inside the Community or from outside" -- but Article 66 sets out circumstances in which states may independently buy on the world market. Provisions in the Treaty providing for the pooling and sharing of technical information also allow for secrecy and the withholding of information where national security -- as defined by the member states themselves -- is involved.<sup>8</sup>

## **The European Community**

The most important constituent treaty is the second Treaty of Rome, for it created the European Economic Community (the EC), the most inclusive institution embodying Schumann and Monnet's vision of a united Europe.

Article Two of the EC Treaty lays down the following broad objectives:

The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.

The Treaty's immediate objective was the establishment of a common market among the member states. This common market was to be based on:

- the removal of all tariffs and quantitative restrictions on internal trade;
- the erection of common external tariffs. This would mean that goods entering the EC would do so on the same basis no matter what their point of entry. No member state would be in the position to gain a competitive advantage by reducing the external tariffs on vital raw materials;
- the prohibition of a range of practices whose effect was the distortion or prevention of competition between member states; and
- measures to provide not only for the free movement of goods between the member states, but also the free movement of persons, services and capital.

Although the Treaty is principally concerned with establishing the groundwork for a common market, its authors regarded economic integration not as an end in itself, but merely as an intermediate stage on the road to political integration. Thus the preamble to the Treaty refers to the member states' determination "to lay the foundations of an ever closer union among the peoples of Europe." The Community founders believed that progress to integration would be achieved in single steps. The success of a common market would teach the member states the benefits of economic integration, and encourage them to forge further economic and social links, which would lead, gradually but inexorably, to political integration. As Robert Schmann put it in 1950, "Europe would not be made all at once or according to a single general plan. It will be built through concrete achievements, which first create a *de facto* solidarity."<sup>9</sup>

## THE CURRENT STRUCTURE OF THE EUROPEAN COMMUNITY

In 1967 the member states agreed to merge the executives of the EC, Euratom and the ECSC, creating a single, unified governmental structure. The principal institutions of the EC are the European Commission, the Council of Ministers, the European Parliament, and the European Court of Justice. The Commission and the



Council are located in Brussels, the Parliament is located in Strasbourg,<sup>10</sup> and the Court is located in Luxembourg.<sup>11</sup>

It is important to point out that the Community structure is unique, and cannot readily be compared to the representative and parliamentary institutions with which Europeans (and Canadians) are familiar in their own countries. The Commission is the Community's bureaucracy, but unlike member states' and Canadian bureaucracies, it also has the power to initiate legislation. The Council of Ministers is the Community's executive, but cannot formally propose legislation. The European Parliament is the Community's legislature, but has only a consultative role, in contrast to the elected legislatures in the European democracies and Canada, whose members can propose legislation. The European Court of Justice, the Community's appeal court, does bear a close resemblance to the final appeal courts of the member states and Canada.

### **The Accountability of the European Community**

The EC can be described as a quasi-federalist institution. It constitutes a compromise between a confederate arrangement, wherein independent states agree to co-operate but without ceding any of their national sovereignty, and a genuinely federal state in which power is divided between a national government and regional governments. The member states of the EC have agreed to pool their sovereignty at the supranational level. While it is true that within the areas of the Community's authority Community law is supreme over national law, the member states have not irrevocably surrendered their freedom of action within the Community's areas of responsibility. Governments are represented on the Council of Ministers, which is the most important Community institution. The Luxembourg Compromise recognized that the major Community countries could not be compelled to accept EC decisions they regarded as contrary to their national interests. The leaders of the member states make up the European Council (not to be confused with the Council of Ministers), which has become increasingly

influential in the last decade. Moreover, civil servants of national governments are deeply involved in Community decision-making below the ministerial level by means of their membership on the myriad of advisory committees which assist the Commission, and through the Committee of Permanent Representatives (COREPER).

While governments of member states have taken care to ensure they retain the ability to shape Community decision-making, voters in member states have little or no influence whatever. Neither the European Parliament (EP) nor the national legislatures which they elect exercise effective control over Community institutions. In 1988 the EP released a report suggesting that the Community suffered from a "democratic deficit": this was the gap between the powers transferred to the Community by the member states, and the control of the elected European Parliament over them.<sup>12</sup>

The EP is weaker *vis-à-vis* the executive organs of the Community than the national legislatures of the Community are *vis-à-vis* their executives. The institutions principally concerned with the development of policy in the Community are the Council of Ministers and the Commission, not the EP; and the EP does not have the means effectively to hold the principal decision-making body of the Community, the Council, accountable.

National legislatures of member states have little input into positions taken by heads of governments, either in the Council of Ministers or the European Council. They have no formal means of participating in the development of Community policy. Legislative debates on Community issues are rare in large part because most legislators are more interested in local, topical problems. Ministers have the freedom to decide how much or how little information to release about their government's views on items appearing on the Council of Ministers' agenda. While many national parliaments in member states have set up committees to scrutinize their governments' EC activities, only one, that of Denmark, has a

standing parliamentary committee which manages actively to scrutinize the Danish government's policies on the EC.

The following sections describe how the Community's principal institutions work and sketch the main features of the Community's complex legislative process.<sup>13</sup>

### **The European Commission**

The role of the Commission is laid down in the three founding Treaties and in Community legislation. The Commission's principal responsibilities are:

- to propose policies to the Council of Ministers which are likely to advance the development of the EC;
- to ensure that the Treaties and Community legislation are respected by member states;
- to administer the common market, the Common Agricultural Policy, and all other agreements affecting the Community marketplace;
- to manage the budget of the EC; and
- to conduct on behalf of the Community trade negotiations with other governments.

The Commission is headed by 17 Commissioners, known collectively as the College of Commissioners. Each of the following member states appoints two Commissioners: France, Germany, Italy, Spain and the United Kingdom. The remaining seven member states appoint one each.

The Commission is appointed collectively by unanimous consent among the 12 member states. This procedure was adopted in order to emphasize that the Commission is supposed to represent the Community as a whole, and not the national interests of individual Commissioners. Each Commissioner takes an oath in which he or she pledges not to seek or accept instructions from national



governments or political parties. Commissioners serve a four-year term and are eligible for re-appointment. During their term they cannot be individually dismissed; the European Parliament has the power to dismiss the entire Commission by a vote which must receive the support of two-thirds of the Members voting (this has never happened).

The member states choose a President for the Commission from among the Commissioners. He or she is the Commissioner's principal representative in Europe and abroad. The current President is Jacques Delors of France.

Each Commissioner holds one or more portfolios covering the Community's areas of responsibility. All Commissioners must agree to a policy proposal before it is submitted to the Council of Ministers. Commissioners are served by Directorates-General, which are the equivalent of ministries in the Ontario government. There are over 20 Directorates-General which, together with specialist bodies such as the Statistical Office, compose the civil service of the Commission.

### The College of Commissioners

Although Commissioners are formally and collectively appointed, they are nominated by member states. In practice, Commissioners do take heed of the national interests of their native countries when formulating and approving proposals. However, because Commission decisions must be unanimous, the Commissioners are compelled to strive for compromises. If they press their country's national interests too far, unanimity will be impossible to achieve.

The range of political opinion represented on the Commission reflects the diversity prevalent among the national governments of the Community. Those states with two appointees tend to split their appointees between the two largest political parties represented in the national legislature; the other states tend to appoint a member of the governing party.

Formally, the President is free to assign portfolios to Commissioners as he or she pleases. However, there are political constraints which no President can escape. Re-nominated Commissioners naturally expect senior positions, and the larger member states wish to see their Commissioners receive the more important or high profile portfolios.

The President is expected to provide leadership not only for the Commission but the EC as a whole. How successful a President will be in this capacity will depend a great deal on his or her strength of personality, since he or she has few formal powers over the other Commissioners.

### The Executive Functions of the Commission

The Treaties and Community legislation grant the Commission substantive rule-making power, necessary for the administration of Community law and policies. For example, under the Common Agricultural Policy the Commission regularly issues regulations dealing with price adjustments and market support measures. Under the Common External Tariff the Commission is empowered to introduce preventive measures for a limited period in order to protect the Community common market from dumping by other countries.

The Commission usually issues between 4,000 and 5,000 legislative instruments per year. These are in the form of regulations, directives, or decisions. A regulation (once it is adopted by the Council of Ministers on a recommendation by the Commission) is binding on all member states. The policy objectives of directives are equally binding, but how they are implemented is left to the discretion of each member state. Decisions of the Commission are similar to regulations, but may apply to one or more but not all member states (or individuals).

### How the Commission Works

When a new Commission is appointed, one of its first tasks is to draw up an "action program," which is a detailed plan of what the Commission hopes to achieve in the year ahead. The plan is regularly updated in a "state of the Community" speech by the President, and progress is reported in a series of monthly and annual reports.

The policy-making process employed by the Commission works as follows:

- an initial draft is drawn up within the appropriate Directorate-General. This draft will reflect the priorities of the "action program," or other guidelines laid down by the Commissioners, for example through their speeches or public pronouncements;
- the draft is passed upwards through the bureaucracy of the Directorate-General and revised extensively, until it is ready for review by the College of Commissioners; and
- the College of Commissioners may accept or reject the proposal, or refer it back to the Directorate-General for revisions.

The preparation of proposals within a Directorate-General invariably includes a period of protracted consultation with all affected interest groups within the Community as well as with governments of member states. Over the years, a large and complex network of advisory committees has sprung up to assist and lobby Directorate-General public servants in drafting proposals. Such committees are of two types. The first consists of officials, experts and specialists nominated by governments of member states. The second consists of representatives of interest groups and sectional interests, which are organized and funded by the Commission itself. The members of these committees are usually appointed by the Commission from nominations made by Community level organizations such as the Union of Industries in the European Community or the European Trade Union Confederation.



Most of the committees are chaired by Commission officials. Commission officials attend meetings of all the committees as observers. In this way the Commission is kept abreast of views expressed in the committees and the Commission can take note of them when drafting policy proposals.

Because many policy proposals cut across the division of responsibilities among the Directorates-General, co-ordination in the drafting of proposals is crucial. The agency mainly responsible for promoting co-ordination is the Secretariat General of the Commission, which endeavours to ensure that all Commission interests have been consulted before a proposal is submitted to the College of Commissioners.

### **The Council of Ministers**

The Council of Ministers is the EC's most powerful institution and main decision-maker. The Council makes decisions which have the force of law, concludes agreements with foreign countries and, together with the European Parliament, decides the Community's budget.

The Council consists of senior ministers from the member states. Its composition changes according to the agenda before it. Thus, when the Council discusses economic issues, it consists of member states' finance ministers; when it discusses the environment, it consists of environment ministers, and so on. Most Council meetings (of which there are six or seven a month) involve the ministers responsible for economics, agriculture or foreign affairs in their national governments.

The Presidency of the Council rotates among member states at six-month intervals. The main responsibilities of the Presidency are:

- to arrange for and chair all Council meetings. These tasks give to the Presidency considerable control over how often particular Councils and Council committees meet and over their agendas;

- to launch and build a consensus for initiatives. The President has the role of mediator among the member states in the search for a consensus on policy; and
- to represent the Council in dealings with other bodies such as other Community institutions and countries not belonging to the Community.

Under the founding Treaties the Council does not have the power to initiate or draft proposals itself, but is limited to acting (or refusing to act) on the basis of proposals forwarded by the Commission. However, in practice the Council has managed to acquire for itself an important policy-making role:

- the Council has exploited Article 152 of the EC Treaty to expand its role. This Article reads: "The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals." The Council regularly invokes this Article to issue specific instructions to the Commission requiring it to pay close attention to what the Council wants;
- the Council has adopted the practice of issuing opinions, resolutions, agreements and recommendations which may not have the status of legal texts but are designed to pressure the Commission to devise legislative proposals along lines suggested by the Council;
- as the Community has moved into policy areas not explicitly covered by the Treaties, uncertainty regarding the exact responsibilities of the Community's institutions has resulted. The Council has exploited this to increase its own authority;
- the emergence of the Council Presidency as a key actor has enabled the Council to determine Community priorities and directions; and
- the increasing willingness of the member states to abide by non-binding agreements has benefited the Council, since such agreements do not have to be initiated by the Commission, but can be by the Council.

#### Administrative Support for the Council

The ministers who attend Council meetings are able to be present in Brussels for only short periods of time, preoccupied as they are with their domestic political

duties. The day-to-day administration of Council affairs is handled by a Committee of Permanent Representatives, known by its French acronym, COREPER. COREPER consists of the member states' permanent delegations to the Council. Each delegation is headed by a Permanent Representative, who is usually a diplomat of senior rank.

Because of its complexity and the volume of Community business it generates, agriculture is normally not dealt with at all by COREPER but by a separate body of member states' officials known as the Special Committee on Agriculture. This Committee is staffed by senior officials, either from the Permanent Representatives' offices or from member states' Ministries of Agriculture.

### The Policy Process in the Council

The Council's procedures for dealing with a Commission proposal for Council legislation is as follows:

- a) the item is first considered by the relevant Council committee(s). Since all member states or the sectoral interests within their boundaries are represented on the committees and must be consulted before a proposal is approved, this stage can take many months, even years;
- b) if the committee(s) does approve a text, the proposal is sent to COREPER or the Special Committee on Agriculture. COREPER acts as a filtering agency, such that the Council can concentrate on only the most difficult and sensitive matters. If the committees have not been able to reach a consensus on the text of a proposal, COREPER will try to resolve the issue, or send it back to the committees for more work;
- c) the third and final stage is consideration by the Council itself.

The principal factors determining the speed with which a proposal progresses through the Council machinery, and whether it will be adopted at all, are as follows:



- the urgency of the proposal;
- whether the proposal is controversial, and is strongly opposed by a member state(s);
- the extent to which the Commission has tailored the language of the text to accommodate national objections and reservations already raised before it is considered by the Council;
- the complexity of the proposal;
- the willingness of the Commission to accept modifications to its proposals suggested by the Council;
- the administrative and diplomatic skills of the Council Presidency; and
- the agility and flexibility of the participants to accept compromise formulae.<sup>14</sup>

### Voting in the Council

The Treaties provide three ways in which the Council can make a decision: unanimously, by a "qualified" majority vote, or by a simple majority vote. Only minor matters are decided by the third method. Unanimity is required for a small number of important issues, such as the question of admitting new member states to the EC, or adopting a policy over the express opposition of the Commission. Most matters before the Council are decided by a qualified majority under the terms of Article 148(2) of the EC Treaty. Under this Article the votes of the member states are weighted as follows: Germany, France, Italy and the United Kingdom have 10 votes each; Spain has eight votes; Belgium, Greece, the Netherlands and Portugal have five votes each; Denmark and Ireland have three votes each; and Luxembourg has two votes. The total number of votes is 76; a qualified majority is 54 votes.

Under this formula the five largest states cannot outnumber the smaller seven, and the two largest states (Germany and France) cannot by themselves constitute a blocking minority.

Over the years a convention has developed to the effect that the majority voting procedure should not be used to push through a policy which a member state regards as harmful to its vital interests. This convention has its origins in the crisis of 1965, which was resolved by the "Luxembourg Compromise" of early 1966. In 1965 the Commission released an important policy package which included the completion of the Common Agricultural Policy and a mechanism to provide the Community with its own financial resources independent of the member states. The French government objected to these proposals as well as the advent of qualified majority voting, which under the terms of the EC Treaty was to be introduced in January 1966. From July 1965 onwards France boycotted all Community meetings (this became known as the "empty chair" policy) as a form of protest against these developments. Eventually, France agreed to a meeting in January 1966 with the five other member states then constituting the EC. The states eventually agreed to the "Luxembourg Compromise" (also known as the Accord).

The main provisions of this Compromise dealing with majority voting are as follows:

Where, in the case of decisions which may be taken by majority vote on a proposal of the Commission, very important interests of one or more partners are at stake, the Members of the Council will endeavour, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council while respecting their mutual interests and those of the Community, in accordance with Article 2 of the Treaty.

With regard to the preceding paragraph, the French delegation considers that where very important interests are at stake the discussion must be continued until unanimous agreement is reached.

The six delegations note that there is a divergence of views on what should be done in the event of a failure to reach complete agreement.<sup>15</sup>

Although it has no constitutional status, the Luxembourg Compromise has dramatically affected the operation of the Council of Ministers. The member states have interpreted the second paragraph of the Compromise to mean that every state has the right to exercise a veto on questions which affect its vital national interests. On only one occasion since 1966 has the Compromise been breached. This occurred in 1982, when a qualified majority on the Council voted to support agricultural price increases over strenuous British objections. The qualified majority pointed out that the British did not object to the price increases themselves, but were threatening to invoke a veto in order to pressure the other member states to agree to a readjustment of Britain's contribution to the Community budget.

In order to facilitate the completion of the common market of the Community (which is discussed in greater detail below), member states agreed to the passage of the Single European Act in 1986. Under article 18 of this Act, the Council of Ministers is empowered to pass by a qualified majority measures "which have as their object the establishment and functioning of the internal market." The veto would continue to apply only to measures aimed at completing the internal market relating to tax, the free movement of people, and the rights of workers.<sup>16</sup> Up until now the Single European Act has not been wielded by a majority in the Council to push through measures opposed by a minority of member states.

### The European Council

In 1974 the member states agreed that their heads of state or government, together with their foreign ministers, should hold summit conferences at regular intervals. In time, these meetings became formalized and are known as the European Council.

The meetings of the European Council take place at least twice a year, usually in June and December. They have become an important forum, in which the most



critical political issues facing the Community are thrashed out among leaders of member states.

### **The European Parliament**

Under Article 137 of the EC Treaty, the European Parliament (EP) is to consist of "representatives of the peoples of the States brought together in the Community." Until 1979 Members of the European Parliament (MEP) were nominated by national parliaments of member states, from among the members of national parliaments. The 1979 elections to the EP were the first in which MEPs were directly elected by the voters of the member states. (Elections are held every five years).

The EP consists of 518 members. The seats are distributed among the member states as follows:

<b>Number of MEPs</b>	
Belgium	24
Denmark	16
West Germany*	81
Greece	24
Spain	60
France	81
Ireland	15
Italy	81
Luxembourg	6
Netherlands	25
Portugal	24
United Kingdom	81
	<hr/>
	518

\*The two Germanies were unified in 1990. It is anticipated that Germany's share of seats in the EP will eventually be increased to reflect this development.

These allocations are not proportional to the populations of member states. The system is designed to recognize the preeminence of larger member states, but without swamping smaller ones.<sup>17</sup>

MEPs sit in the EP according to their party, not their nationality. Most of the parties currently represented in the EP are coalitions or informal groupings of national parties. Party cohesiveness tends to vary depending on the issue under discussion: not surprisingly, national allegiances are often more important to the MEPs than party loyalty.

The most recent elections to the EP were held in 1989. The results were:

<i>Party</i>	<i>Seats</i>
Socialists	181
Christian Democrats	106
Conservatives	49
Liberals	42
Communists	41
Rainbow	36
Extreme Right	22
Independent	21
Gaullists	20
	<hr/>
TOTAL	518

In the 1989 elections the Socialists emerged as the majority party. Up until 1989, a centre-right majority existed on most important votes. This consisted of the Christian Democrats, which in most continental member states is the principal centre-right party, and the Conservatives, which is the European branch of the British Conservative party. Recently the Conservatives approached the Christian Democrats (who have renamed themselves the European Peoples' Party since the 1989 elections) and proposed that the two parties formally merge.<sup>18</sup> The Liberals are a coalition of the continental liberal (i.e., centre-left) parties. The Gaullists are a French right-wing party. The Rainbow party is a coalition of national Green parties and other ecology activists. The Extreme Right are neo-fascist.<sup>19</sup>

Overall electoral participation has declined in the last decade. In 1979, 63% of the European electorate voted; in 1984, 61%; and in 1989, 58%. Turnout among the

member states varies widely, from a high of 91% in Belgium in the 1989 elections, to a low of 36% in Britain.

A number of reasons have been offered to explain the striking variation in the participation rate in European elections. Voting is compulsory in Belgium, Greece and Luxembourg, where the turn-out rates are very high. Voting tends to be higher when the election coincides with a national election and the same ballot is used. Other factors cited are variations among member states on restrictions on campaign advertising, and media interest, or lack of it, in the elections.<sup>20</sup>

It can be argued that elections to the EP are not yet regarded by the electorates of the member states as a European-wide event, reflecting a trans-national, "European" consciousness.<sup>21</sup>

### The Role of the European Parliament

The EP has the right under the EC and Euratom Treaties to be consulted on all legislation proposed by the Commission or the Council. The legislative process begins when the Commission formulates a proposal and sends it to the Council, which in turn forwards it to the EP for its opinion. The proposal is first considered in one of the EP's committees, whose report is debated in the full Parliament, and will provide the basis for the EP's resolution on the proposal, known formally as its "opinion." The Commission may modify its proposal in light of the EP's opinion, but there is no obligation on either the Commission or the Council to abide by the EP's views. However, while the EP has no power to affect the content of legislation, its right to be consulted must be respected. If the Council acts prematurely and does not wait for the EP to make its recommendations, the European Court of Justice will declare its legislation or regulations invalid.<sup>22</sup> This provides the EP with a delaying power it can exploit to increase its influence on Community legislation. The EP will first vote on amendments to Commission proposals advanced by its members and then, before



voting on the resolution as a whole, will seek an undertaking from the Commission and Council that its amendments will be incorporated into the proposal. If this undertaking is not forthcoming, the EP can delay the final vote, thereby preventing action by the Council of Ministers.<sup>23</sup>

The Single European Act, passed by the European Community in 1986, strengthened the legislative powers of the EP. Articles six and seven of the Act provide for a "co-operation procedure" applicable to most of the occasions on which the EC Treaty requires the EP to be consulted. The co-operation procedure adds a second stage to the legislative process. Once the Council has received Parliament's opinion, instead of adopting a final position on the proposed legislation the Council can only endorse a "common position." This "common position" is referred to the EP for what is known as the second reading stage of consideration. The EP has three months to adopt one of three courses of action. If the EP approves the common position, or fails to take any action by the deadline, the Council will proceed with the proposal. If the EP rejects the common position, the Council cannot proceed with the proposal unless its members vote unanimously to do so. Finally, the EP can propose amendments to the common position, which the Commission is required to consider. After such consideration it forwards the proposal to the Council together with the amendments it has accepted, or a statement explaining why it has chosen not to endorse the EP's amendments. At this stage, the Council can either accept the proposal as amended by the Commission, for which a qualified majority of votes is sufficient, or it can amend it, either by adopting amendments proposed by the EP but rejected by the Commission, or by devising its own amendments. In both of these latter cases it can act only by unanimity.

The co-operation procedure was adopted in response to complaints by MEPs that the EP had little real influence in the legislative process. The procedure does enhance the role of the EP, albeit modestly. It has served to encourage the Commission and the Council to take the views of the EP more seriously when

drafting legislative proposals. It is easier for the Council to accept a proposal amended by the EP and supported by the Commission than to introduce its own amendments, since the former step requires only a majority vote, while the latter requires unanimity. When the EP rejects a Council proposal, it needs the support of only one Council member to block it conclusively.

Under the Single European Act the EP is granted a veto over the admission of any new states to the Community. Agreements between the Community and non-member countries negotiated by the Council must receive the Parliament's consent (on a vote of a majority of all MEPs).

The EP has the power to dismiss the entire Commission by passing a vote of censure, which must be supported by two-thirds of the votes cast. However, the EP has no say in the appointment of a new Commission. If the EP did vote to dismiss the Commission, the Council could reselect the very same people. This power of dismissal is too blunt and crude an instrument to be used effectively as a means of holding the Commission accountable to the EP. In fact, it has never been invoked.

In most areas of policy, the principal institutional actors are the Council and the Commission; however, in budgetary matters the Council and the EP are the most important decision-makers. The budgetary process of the Community is described in the next section.

### The Budgetary Process

The financing of the EC has been a continual source of controversy among member states. Some states (especially the UK) have complained vociferously about the scale of financial aid they have been asked to contribute to the Community. In fact, the Community budget is quite modest. In the 1980s the annual budget ran between \$50 and \$60 billion (U.S.), which represents less than

2% of the member states' GDP. A comparison to public spending by the British government (which has complained vociferously about the size of its contribution to the EC) is instructive. In the late 1980s, the entire budget of the EC amounted to less than one-fifth of the size of the budget of the British government.<sup>24</sup>

The first step in the budgetary process of the Community begins with each institution drawing up its estimates of expenditure, which are sent to the Commission. The Commission consolidates them into a "preliminary draft budget" (PDB). This stage occurs in late winter or early spring of the year before the budget is to go into effect (the fiscal year corresponds with the calendar year). Then the Commission sends the budget to the Council of Ministers.

The Council of Ministers formally meets to consider the budget in the summer. Before beginning its deliberations, it will meet a delegation from the EP, comprised usually of the Parliament's President (which is the equivalent of the Speaker in a Canadian legislature), the chair of the EP's Budget Committee, and other committee chairs.

Once the Council (by a qualified majority) approves the budget, it is sent to the EP. The EP has the power to accept the budget, to amend it or to reject it. If the EP accepts it, it is thereby adopted; also, if the Parliament takes no action within the following 45 days, it is deemed to have adopted it.

The EP's right to make changes in the budget depends on the distinction made by the Community between expenditures which directly result from Treaty obligations or Community legislation (known as compulsory or obligatory expenditure), and all other expenditures (known as non-compulsory expenditure). The former regularly takes up between two-thirds and three-quarters of the total budget (of this, over 90% goes to farm price guarantees). In the case of compulsory expenditures, the EP may only propose "modifications" to them; in the case of non-compulsory expenditures, the EP may make binding amendments. Proposed modifications are



carried by a majority of the votes cast; amendments have to be carried by a majority of all MEPs. The budget will be sent back to the Council of Ministers with the EP's amendments and proposed modifications in November.

The procedure the Council follows in considering the budget at this stage (known as the second reading stage) depends on whether modifications or amendments are at stake:

- proposed modifications by the EP which do not increase the total expenditure of a Community institution may be rejected by the Council, by a qualified majority. If no such motion is passed, the modifications are deemed to have been accepted;
- proposed modifications which do increase the total expenditure of a Community institution are deemed to have been rejected unless the Council expressly accepts them. A motion accepting such a modification must pass by a qualified majority; and
- amendments passed by the EP may be modified by the Council, by a qualified majority. If no such motion is passed within 15 days, the amendment is deemed to have been accepted.

If, within 15 days, the Council has accepted the EP's modifications, and has not altered any of its amendments, then the budget is deemed to have been adopted. Otherwise the budget goes back to the EP for a second reading, which is usually held in December.

The EP is empowered to reject the budget entirely. Such a motion must be passed by a majority of all MEPs and two-thirds of those actually voting. When this occurs (three times since 1979), a new budget must be drawn up by the Council and placed before the EP. If no budget is approved by January 1, the Community continues to be funded on a month-to-month provisional basis until agreement is reached. Regarding non-compulsory expenditure, the Parliament has the right to reject the Council's modifications to its amendments, and such a rejection is

definitive. A motion to this effect must carry with the support of a majority of all MEPs, as well as three-fifths of those actually voting.

It can be seen that under this process the EP has considerable influence over non-compulsory expenditure, and a crude power to accept or reject the budget in its entirety. What the EP does not have is effective influence over the most important element in the Community's budget, compulsory expenditure. This deficiency was remedied somewhat by a Joint Declaration of 1975. This Declaration established a conciliation procedure which applies to financial legislation. When the Council does not intend to follow the Parliament's opinion on such legislation, a Conciliation Committee is convened, consisting of the Council and 12 MEPs. The Committee has three months to arrive at a compromise. In practice, the Council has interpreted this Declaration to mean that it is allowed to continue to ignore the Parliament's views if a compromise is not possible.<sup>25</sup>

### **The European Court of Justice**

The European Court of Justice (ECJ) is based in Luxembourg (and should not be confused with the European Court of Human Rights based in Strasbourg). It is composed of 13 judges who serve six-year renewable terms. Each member state nominates one member of the Court; the 13th judge is appointed in rotation by the five largest member states. The judges choose a president of the Court from among their number, who serves in that capacity for a three-year term.

Assisting the ECJ are six advocates-general, who provide impartial advisory opinions on cases pending before the Court. Four of the six are appointed by the largest member states and two are chosen by the smaller member states in rotation.<sup>26</sup>

The role of the ECJ is to hear cases arising under the Community Treaties and Community legislation. The Commission, the Council of Ministers and the

member states may bring cases in the ECJ. Individuals and corporations also have standing if they can demonstrate that the EC action complained of "is of direct and individual concern," in the words of Article 173 of the EC Treaty. The ECJ can award damages to anyone seriously injured by wrongful acts of EC institutions. Should the ECJ find a member state in breach of Community law, the offending state is expected to take appropriate remedial action. If it fails to do so, the Court may hold that the state has violated the law.

When Community law is passed, it becomes part of the national law of the member states. It is the duty of the national governments to ensure that the law is kept, and that of national courts to recognize and enforce rights and obligations arising under Community law. The ECJ has vigorously and consistently applied these principles in its jurisprudence; the Court is recognized by students of the EC as a major contributor to the development of Community law as an autonomous and integrated legal system which limits the sovereignty of the member states.<sup>27</sup>

## CONCLUSION

This Paper has provided an introductory sketch of the principal institutions of the EC and how they work. It is important to point out that the Community is a dynamic body in a constant state of evolution. For example, while the formal authority of the European Parliament has been increased by the Single European Act, it remains to be seen whether Members will grasp the opportunity to play a more significant role in the legislative process. Under the presidency of Jacques Delors, the European Commission has assumed a high profile and seized the initiative from the other institutions on a wide variety of issues, such as the plans for completing the internal market of the Community by 1992.

In the 1980s the EC has launched a series of initiatives whose ultimate objective is the economic and political integration of the Community into a unified structure empowered to legislate in virtually every area of policy currently under the



sovereign jurisdiction of the member states. The member states have agreed to eliminate all internal barriers to trade by 1 January 1993, and are currently discussing draft treaties which would provide for a unified monetary system and political union. These developments, and their possible impact on Ontario and Canada, will be discussed in a forthcoming Current Issue Paper.

## FOOTNOTES

<sup>1</sup> The six founding member states were France, West Germany (as it then was), Italy, the Netherlands, Belgium and Luxembourg. Great Britain, Ireland and Denmark joined in 1973. Greece joined in 1981. Spain and Portugal joined in 1986.

<sup>2</sup> The European Community should not be confused with the European Free Trade Association (the EFTA), which was created in 1960 by Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom. The EFTA was created by states which for a variety of reasons did not wish to join the EC.

<sup>3</sup> T.C. Hartley, The Foundations of European Community Law (Oxford: Clarendon Press, 1988), p. 88.

<sup>4</sup> Quoted in P.S.R.F. Mathijsen, A Guide to European Community Law, 5th ed. (London: Sweet and Maxwell, 1990), pp. 5-6. The novelist Victor Hugo coined the phrase "United States of Europe" in 1849.

<sup>5</sup> Neill Nugent, The Government and Politics of the European Community (London: Macmillan, 1989), pp. 32-33.

<sup>6</sup> Ibid., pp. 35-36.

<sup>7</sup> Following the collapse of the EDC, the Western European Union (WEU) was created in 1955 by the three Benelux countries, France, the United Kingdom, Germany and Italy. The purpose of the WEU was to provide a framework within which Germany could be supervised as it rearmed and joined NATO.

<sup>8</sup> Nugent, The Government and Politics of the European Community, p. 42.

<sup>9</sup> Quoted in Rosemary P. Piper and Alan Reynolds, "Lessons from the European Experience," in Continental Accord: North American Economic Integration, Steven Gliberman, ed. (Vancouver: The Fraser Institute, 1991), p. 126. The official title "European Economic Community" was deliberately chosen over the better known "Common Market" by the founding member states, because they expected integration to develop well beyond the trade area implied by the latter phrase.

<sup>10</sup> The Parliament's legislative committees meet in Brussels and its secretariat is located in Luxembourg. The amount of money it costs to shuffle MEPs and their staff back and forth among locations is often lamented in the Community, but no one can agree on a permanent location.

<sup>11</sup> The European Community has no official language: all documents are translated into the 11 principal languages used in the member states. Simultaneous translation is provided for all meetings of Community institutions. (For example, about 70% of the staff attached to the Council of Ministers are translators and interpreters). At the same time, however, some languages are more equal than others. For instance, under the

presidency of Jacques Delors, a Frenchman, the working language of the Commission is French.

<sup>12</sup> See Vernon Bogdanor, "The June 1989 European Elections and the Institutions of the Community," Government and Opposition 24:2 (1989): 203.

<sup>13</sup> For reasons of space this Paper does not discuss the subsidiary institutions of the EC, the most important of which is probably the Court of Auditors. The 12 members of the Court of Auditors are appointed by the Council of Ministers, after consulting with the European Parliament. The Court is responsible for examining the accounts of the Community's revenues and expenditures to determine whether revenue has been received and expenditure incurred in a lawful manner, and whether the Community's financial management is sound.

<sup>14</sup> Nugent, The Government and Politics of the European Community, p. 99.

<sup>15</sup> Quoted in Hartley, The Foundations of European Community Law, p. 18.

<sup>16</sup> These areas of policy were exempted from the qualified majority voting procedure because they deeply affected the physical security of the citizens of the member states and the economic sovereignty and social organization of the member states themselves. See Nicolas Colchester and David Buchan, Europower (New York: Times Books, 1990), p. 44.

<sup>17</sup> Article 138 of the EC Treaty declares that: "The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States." However, the member states have never agreed on a uniform procedure. Elections to the EP are conducted according to the system in use in each member state for national elections. All the states except the United Kingdom use some form of proportional representation. The UK uses the "first past the post" system prevalent in Canada. It is largely because of British unwillingness to adopt proportional representation that a uniform electoral system has never been adopted.

Legislation passed by the EC in 1976 permit members of national parliaments of the member states to sit simultaneously as MEPs. However, a number of member states have passed legislation forbidding this. Thirty-four current MEPs are also members of their national parliaments. See Francis Jacobs and Richard Corbett, The European Parliament (Boulder, Colo.: Westview Press, 1990), pp. 19, 44.

<sup>18</sup> See Sir Christopher Prout, "Working Together," The House Magazine (3 June 1991): 8. Sir Christopher is leader of the British Conservatives in the EP.

<sup>19</sup> Because party cohesiveness in the EP tends to be fluid, the membership of the political parties often fluctuates between elections, as MEPs leave one party to join another, or to form a new one. An up to date account of the party standings in the European Parliament can be found in Jacobs and Corbett, The European Parliament, pp. 58-74.



<sup>20</sup> See Hermann Schmitt, "The European Elections of June 1989," West European Politics 13 (1990): 117.

<sup>21</sup> Ibid.

<sup>22</sup> Roquette v. Council, Case 138/79, [1980] E.C.R. 3333.

<sup>23</sup> Richard Corbett, "The Growing Influence of the European Parliament on European Community Legislation," European Affairs 3:2 (1989): 26.

<sup>24</sup> See Nugent, The Government and Politics of the European Community, p. 259; Hugh Arbuthnott and Geoffrey Edwards, A Common Man's Guide to the Common Market (London: Macmillan, 1989), p. 150; and Nigel Tutt, Europe On The Fiddle (London: Christopher Helm, 1989), p. xv. In addition to the levies paid by member states which are based on their GNPs, the Community has the power to generate income itself by means of customs duties, levies on agricultural imports from outside the EC, and a proportion of the value added taxes (VATs) levied by the member states.

<sup>25</sup> Nugent, The Government and Politics of the European Community, p. 44.

<sup>26</sup> In the 1980s the workload of the ECJ began to overwhelm its members. Throughout the decade the number of cases brought steadily rose, reaching an average of 400 by 1989. The rising rate of litigation reflected the increasing regulatory and legislative activism of the Community's institutions. At the same time, the Court's capacity to dispose of this caseload fell behind: the number of cases pending rose from 328 in 1980 to 605 in 1988 (see Timothy Millet, "The New European Court of First Instance," International and Comparative Law Quarterly 38 (1989): 811). The member states agreed to address this problem by providing in the Single European Act for a new court, the Court of First Instance, which commenced operations in 1989. This Court has jurisdiction in the areas of competition law, ECSC law, and employment disputes between staff members of EC institutions. All decisions of the Court of First Instance are subject to appeal to the ECJ. The Court of First Instance consists of 12 judges appointed by the member states, one by each state.

<sup>27</sup> See T.C. Hartley, "Federalism, Courts and Legal Systems: The Emerging Constitution of the European Community," American Journal of Comparative Law 34 (1986): 229.













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